

Appln No. 09/503,022
Docket No. 14XZ00055 / GEM-0228

REMARKS / ARGUMENTS

Status of Claims

Claims 1-14 are pending in the application. Claims 1-3 stand rejected. Claims 4-9 and 11-14 are objected to as being dependent upon a rejected claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant appreciates the Examiner's comments regarding the allowability of the noted claims. Applicant has canceled Claims 4 and 11, and has amended Claims 1, 5-8, 10 and 12-14, leaving Claims 1-3, 5-10 and 12-14 for consideration upon entry of the present Amendment.

Applicant respectfully submits that the rejections 35 U.S.C. §103(a), have been traversed, that no new matter has been entered, and that the application is in condition for allowance.

These amendments and accompanying remarks were not presented earlier because Applicant did not fully appreciate the nature of the Examiner's position until the Applicant was advised in more detail of the position by the final rejection, which introduced new grounds of rejection. The claim amendments presented herein, which Applicant respectfully requests entry thereof, should require only a cursory review by the Examiner as they include only elements presented in earlier examined claims. Accordingly, such amendments should not require further consideration or search.

Rejections Under 35 U.S.C. §103(a)

Claims 1-3 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Florent (U.S. Patent No. 6,151,417, hereinafter Florent) in view of Florent (U.S. Patent No. 6,154,519, hereinafter Florent et al.).

Applicant traverses these rejections for the following reasons.

Applicant respectfully submits that the obviousness rejection based on the References is improper as the References fail to teach or suggest each and every element of the instant invention in such a manner as to perform as the claimed invention performs.

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For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Examiner must meet the burden of establishing that all elements of the invention are taught or suggested in the prior art. MPEP §2143.03.

Applicant has canceled Claims 4 and 11, and has incorporated limitations from the same into Claims 1 and 10, respectively.

In view of Claims 4-9 and 11-14 being objected to as being dependent upon a rejected claim, but being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, Applicant submits that Claims 1 and 10, amended to include limitations from Claims 4 and 11, respectively, are now allowable.

In view of the foregoing, Applicant submits that the References fail to teach or suggest each and every element of the claimed invention and are therefore wholly inadequate in their teaching of the claimed invention as a whole, fail to motivate one skilled in the art to do what the patent Applicant has done, fail to offer any reasonable expectation of success in combining the References to perform as the claimed invention performs, and discloses a substantially different invention from the claimed invention, and therefore cannot properly be used to establish a prima facie case of obviousness. Accordingly, Applicant respectfully requests reconsideration and withdrawal of all rejections under 35 U.S.C. §103(a), which Applicant considers to be traversed.

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The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 50-2513.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-identified Deposit Account.

Respectfully submitted,

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